



# Department of Justice

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WEDNESDAY, AUGUST 29, 2001  
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## **NEW YORK FOOD COMPANY FINED AND ORDERED TO PAY RESTITUTION IN BID-RIGGING SCHEME**

### **Executive Receives Longest Single Prison Sentence Obtained in a Prosecution by the Antitrust Division**

WASHINGTON, D.C. -- Nick Penachio Co. of the Bronx, NY, was sentenced to pay a \$4.2 million fine and ordered to pay \$4.2 million in restitution as a result of its conviction for bid rigging and other crimes associated with its role in a scheme to rig bids on more than \$200 million of food contracts awarded by the New York City Board of Education (NYCBOE) and other government agencies, the Department of Justice announced. The sentence was imposed today in U.S. District Court in Manhattan by Judge Jed S. Rakoff.

On Monday, Judge Rakoff sentenced Nicholas A. Penachio of Mount Kisco, NY, president of Nick Penachio Co., to serve four years in prison and pay a \$1 million fine for his role in the scheme. In addition, he also was ordered, along with his company, to pay \$4.2 million in restitution to the victims of the crimes.

“The sentence imposed upon Nicholas Penachio is the longest single prison sentence obtained in a prosecution handled by the Antitrust Division,” said Charles A. James, Assistant Attorney General in charge of the Department’s Antitrust Division. “It sends a powerful message to others about the risks of engaging in bid rigging, particularly where public agencies, and the American taxpayers, are victimized.”

Penachio and his company pled guilty on February 20, 2001, to participating in schemes to rig bids on frozen food, produce, dairy and other products supplied to the NYCBOE, the New

York City Department of Citywide Administrative Services (DCAS), the Nassau County (NY) Department of General Services, and the Newark (NJ) Public Schools. Additionally, they pleaded guilty to conspiring to defraud numerous customers through a kickback and embezzlement scheme; conspiring to defraud the IRS by filing false and fraudulent federal tax returns in 1995 through 1998; and obstruction of justice for causing the destruction of incriminating documents that had been subpoenaed by a grand jury.

In a related case, Frank H. Russo of Brooklyn, NY, was sentenced August 21, 2001 in U.S. District Court in Manhattan by Judge Denny Chin to serve 21 months in prison. Together with the company he owns, FHR Inc., of Brooklyn, NY, Russo was also ordered to pay at least \$2.12 million of a total restitution order of \$12.3 million in restitution to the NYCBOE. Russo and FHR Inc. pled guilty on May 2, 2001 to rigging bids on frozen food contracts awarded by NYCBOE.

Russo also pled guilty to conspiring to defraud Odyssey House Inc., a not-for-profit substance abuse organization located in Manhattan, through a kickback and bid-rigging scheme. In addition to the more than \$2 million in restitution to the NYCBOE, Russo was ordered to pay \$27,500 in restitution to Odyssey House.

These defendants were among the 22 individuals and 13 food companies charged May 31 and June 1, 2000, with rigging bids for the supply and delivery of food to the NYCBOE. All pled guilty except one individual, David Salomon of Cranford, NJ, and his company, M & F Meat Products Co. of East Orange, NJ, who were convicted in June after a three-week trial.

To date, the defendants in these and related cases have been ordered to pay approximately \$9 million in restitution to the NYCBOE. Sentencing of the remaining defendants is scheduled to be completed in September.

The NYCBOE operates New York City's public school system, the largest in the United States. It services a student population of nearly 1.1 million, and serves approximately 640,000 lunches and 150,000 breakfasts every day. The NYCBOE purchases more food than any other single customer in the U.S., other than the Department of Defense. It receives the bulk of its funding from the federal, state, and city governments. Most of the meals it serves are subsidized by the United States Department of Agriculture under the National School Lunch Act of 1946.

In addition to public schools, numerous private and parochial schools receive food under the NYCBOE's contracts through programs that provide free or reduced-price meals to needy students. More than 80 percent of the students fed by the NYCBOE receive free meals. Another 10 percent receive reduced-price meals.

These sentences were the result of an investigation by the Antitrust Division's New York Field Office, the Federal Bureau of Investigation, and the Internal Revenue Service Criminal Investigation.

Anyone with information concerning bid rigging, bribery, tax offenses, or fraud in the food distribution industry or concerning bid rigging on any government contract should contact the New York Field Office of the Antitrust Division at (212) 264-0679 or the New York Division of the FBI at (212) 384-3252.

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